

EXHIBIT A

The United States' Plan

**UNITED STATES’
PROPOSED DESEGREGATION PLAN
FOR THE CLEVELAND SCHOOL DISTRICT**

Cowan & United States v. Bolivar County Board of Education,
No. 2:65-CV-00031-DMB (N.D. Miss.)

**Submitted to the Court on
January 23, 2015**

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I. INTRODUCTION

The United States submits this proposed plan to desegregate the two high schools and two middle schools in the Cleveland School District (the “District”). Over the fifty-year course of this case, the District has failed to take effective action to desegregate its middle schools and high schools, which have always operated as racially identifiable schools.

On May 24, 2011, the United States filed a Motion for Further Relief, asking this Court to order the District to take further actions to desegregate its schools. U.S. Mot. for Further Relief, May 24, 2011 [Doc. 5]. On March 28, 2012, the Court found that East Side High School and D.M. Smith Middle School were, and always had been, one-race black schools that were a vestige of the former *de jure* segregated system of schools. Mem. Op. at 25-26, Mar. 28, 2012 [Doc. 43]. The Court ordered the District to propose a plan to desegregate those schools, noting that “[o]ne obvious remedy would be consolidation of the two high schools...and consolidation of the two junior high schools.” *Id.* at 40 n.9.

On May 15, 2012, the District submitted a Proposed Plan [Doc. 44] that involved continuing and expanding certain within-school magnet programs at D.M. Smith and East Side. The United States objected to that plan as constitutionally inadequate. U.S. Objections to Proposed Plan [Doc. 48]. Following a hearing in December 2012, the Court agreed, finding that the District’s “proposed desegregation plan does not meet the constitutional requirements for desegregation.” Order at 1, Jan. 24, 2013 [Doc. 77] (“Jan. 2013 Order”). However, as a remedial measure, the Court abolished the existing middle school and high school attendance zones and the majority-to-minority transfer system, and directed the District to implement an “open-enrollment” system for the middle schools and high schools. *Id.* at 1-2. The United States appealed the Court’s remedial plan to the Fifth Circuit, which, on April 1, 2014, reversed and

remanded the case for further proceedings regarding an appropriate remedy. *Cowan v. Cleveland Sch. Dist.*, 748 F.3d 233, 240 (5th Cir. 2014). On remand, the Fifth Circuit directed this Court to provide “a more explicit explanation of the reasons for adopting the freedom of choice plan, and/or for consideration of the alternative desegregation plans proposed by the parties, as appropriate.” *Id.*

Consistent with the directives of the Fifth Circuit and this Court, the United States’ proposed plan would consolidate the District’s middle schools and high schools into a single middle school and a single high school serving all students in 6th-12th grades in the District (except for 6th graders attending the District’s two magnet elementary schools). This proposal includes relevant background information on the District, details the United States’ proposed plan, sets forth proposed implementation dates and deadlines, and assesses the effectiveness of the plan in enabling the District to meet its continuing desegregation obligations in the areas of student assignment, faculty, staff, extracurricular activities, facilities, and transportation.

The United States’ proposed plan meets the constitutional requirement to “promise realistically to work, and promise realistically to work now.” *See Green v. Cnty. Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 439 (1968). If ordered by this Court, this plan would replace the unsuccessful freedom-of-choice plan ordered by the Court in 2013, which, as detailed below, has resulted in no further desegregation of the middle schools and high schools. The United States’ proposed plan, in contrast, would result in the immediate and effective desegregation of the District’s middle school and high school program for the first time in the District’s more than century-long history.

II. BACKGROUND

A. District Overview

The Cleveland School District is a public school district in Bolivar County, Mississippi serving students who reside in the City of Cleveland, the towns of Merigold, Renova, and Boyle, and neighboring areas. According to 2010 U.S. Census data, the geographic area served by the District had a total population of 19,292 individuals (51.5 percent black, 44.7 percent white, and 3.8 percent other), of which 4,704 individuals (61.4 percent black, 33.5 percent white, and 5.1 percent other) were under the age of 18.

In the 2014-2015 school year, the District has 3,799 students in grades enrolled in grades pre-K through 12. The current District-wide student population is 65.7 percent black, 30.0 percent white, and 4.3 percent other.

The District currently operates ten traditional schools (listed in Table 1 below): six elementary schools (including four zoned schools serving three attendance zones, and two district-wide magnet elementary schools), two middle schools, and two high schools. Table 1 lists these and contains the 2014-2015 student demographics at each school. Additionally, the District operates the Cleveland Career Development and Technology Center (“CCDTC”) (the District’s vocational school where high school students can opt to take classes for part of the school day) and the Walter Robinson Achievement Center (“WRAC”), an alternative school. Exhibit A in the Appendix contains a map showing the geographic boundaries of the District and the location of each school.

TABLE 1: CLEVELAND SCHOOL DISTRICT STUDENT ENROLLMENT (2014-2015)

School	Black	White	Other	Total
Bell Academy (Magnet elementary / Pre-K-6)	191 (50.8%)	164 (43.6%)	21 (5.6%)	376
Cypress Park Elementary School (Zoned elementary /grades 3-5 for students in Nailor/Cypress Park zone)	265 (100%)	0 (0.0%)	0 (0.0%)	265
Hayes-Cooper Center (Magnet elementary / Pre-K-6)	167 (44.1%)	188 (49.6%)	24 (6.3%)	379
Nailor Elementary School (Zoned elementary / grades K-2 in Nailor/Cypress Park zone)	383 (98.7%)	4 (1.0%)	1 (0.3%)	388
Parks Elementary School (Zoned elementary / K-5)	152 (42.1%)	191 (52.9%)	18 (5.0%)	361
Pearman Elementary School (Zoned elementary / K-5)	174 (66.7%)	64 (24.5%)	23 (8.8%)	261
Margaret Green Junior High School (Middle school / 6-8)	267 (50.3%)	229 (43.1%)	35 (6.6%)	531
D.M. Smith Middle School (Middle school / 6-8)	245 (99.6%)	0 (0.0%)	1 (0.4%)	246
Cleveland High School (High school / 9-12)	292 (46.2%)	300 (47.5%)	40 (6.3%)	632
East Side High School (High school / 9-12)	359 (99.7%)	1 (0.3%)	0 (0.0%)	360
<i>DISTRICT-WIDE TOTAL</i>	<i>2495 (65.7%)</i>	<i>1141 (30.0%)</i>	<i>163 (4.3%)</i>	<i>3799</i>

1. High Schools

All 9th-12th graders in the District attend Cleveland High School (“Cleveland High”) or East Side High School (“East Side”). Before the 2013-2014 school year, Cleveland High was a zoned, majority-white high school serving all high school students on the west side of the former railroad tracks that ran north and south through the District, as well as a number of black students zoned for East Side who exercised the majority-to-minority transfer option then in place. East Side was a zoned, virtually all-black high school serving high school students living on the east side of the former railroad tracks, as well as any white students from the western zone who wished to exercise majority-to-minority transfers. There is no evidence in the record that any white students ever chose that option. The two high schools are located 1.2 miles apart (approximately a five-minute drive).

The Court’s January 24, 2013 Order abolished the middle school and high school attendance zones and the majority-to-minority transfer option for middle school and high school students. Jan. 2013 Order at 1-2. That Order directed the District to implement a freedom-of-choice plan for the District’s middle schools and high schools. *Id.* at 1. Accordingly, all students have been able to choose their middle school and high school in the 2013-2014 and 2014-2015 school years.

As this Court found in its March 28, 2012 Memorandum Opinion [Doc. 43] (“Mar. 2012 Op.”), “no data before the Court shows that Eastside High was at any point desegregated and demographics intervened. Simply, Eastside High has never been anything other than a racially identifiable African-American school.” Mar. 2012 Op. at 25. Three years later, the enrollment figures at East Side are virtually identical to those when the Court made its finding.

The freedom-of-choice plan has failed to result in any desegregation of the District’s high schools. Table 2 compares the 2012-2013 student enrollment demographics at the high schools with those in the 2014-2015 school year. The student population at East Side High School has declined slightly, but remains virtually 100 percent black. The student population at Cleveland High has increased slightly, with the numbers of black and white students both increasing slightly; the percentage of white students at Cleveland High has increased slightly and the percentage of black students has decreased slightly since 2012-2013.

TABLE 2: HIGH SCHOOL ENROLLMENT CHANGES UNDER FREEDOM-OF-CHOICE PLAN

School	2012-2013				2014-2015			
	Black	White	Other	Total	Black	White	Other	Total
Cleveland HS	278 (45.4%)	289 (47.2%)	45 (7.4%)	612	292 (46.2%)	300 (47.5%)	40 (6.3%)	632
East Side HS	365 (99.2%)	0 (0.0%)	3 (0.8%)	368	359 (99.7%)	1 (0.3%)	0 (0.0%)	360
<i>HS TOTAL</i>	643 (65.6%)	289 (29.5%)	48 (4.9%)	980	651 (65.6%)	301 (30.3%)	40 (4.0%)	992

2. Middle Schools

All 6th-8th graders in the District attend Margaret Green Junior High School (“Margaret Green”) or D.M. Smith Middle School (“D.M. Smith”), except for those 6th graders who attend the two Pre-K-6 magnet elementary schools. Margaret Green is located in the same former middle school/high school attendance zone as Cleveland High. D.M. Smith is located in the same former middle school/high school attendance zone as East Side. The two middle schools are 1.4 miles apart (also approximately a five-minute drive). Virtually all white students in the District attend, and historically have attended, Margaret Green for middle school.

Margaret Green is located on the same campus as Cleveland High in adjoining facilities. D.M. Smith, which shares a building with Cypress Park Elementary School, is located immediately behind East Side’s campus across a two-lane road.

TABLE 3: MIDDLE SCHOOL ENROLLMENT CHANGES UNDER FREEDOM-OF-CHOICE PLAN

School	2012-2013				2014-2015			
	Black	White	Other	Total	Black	White	Other	Total
Margaret Green JHS	203 (51.1%)	163 (41.1%)	31 (7.8%)	397	267 (50.3%)	229 (43.1%)	35 (6.6%)	531
D.M. Smith MS	306 (99.7%)	0 (0.0%)	1 (0.3%)	307	245 (99.6%)	0 (0.0%)	1 (0.4%)	246
MS TOTAL	509 (72.3%)	163 (23.2%)	32 (4.5%)	704	512 (65.9%)	229 (29.5%)	36 (4.6%)	777

As with the high schools, the freedom-of-choice plan has failed to result in any desegregation of the two middle schools. Since the plan was implemented, Margaret Green’s enrollment has increased from 397 to 531 (a 33.8 percent increase), while D.M. Smith’s enrollment has dropped from 307 to 246 (a 19.9 percent decrease). D.M. Smith’s student body has remained virtually 100 percent black, while the percentages of white students and black students at Margaret Green have remained roughly constant (with a slight increase in the percentage of white students and slight decrease in the percentage of black students).

As this Court found in 2012, D.M. Smith “remains a racially identifiable African-American school with an attendance of 99.7% African-American students” and “no data before the Court shows that D.M. Middle School was ever meaningfully desegregated.” Mar. 2012 Op. at 26. As the current enrollment figures in Table 1 show, absolutely no progress toward desegregation has been made at D.M. Smith since the Court made that uncontested finding nearly three years ago.

3. Elementary Schools

The District currently has four zoned elementary schools in Cleveland serving three attendance zones: Parks Elementary School (grades K-5 in the Parks attendance zone), Pearman Elementary School (grades K-5 in the Pearman attendance zone), Nailor Elementary School (grades K-2 in the Nailor/Cypress Park attendance zone), and Cypress Park Elementary School (grades 3-5 in the Nailor/Cypress Park attendance zone). The District’s two magnet elementary schools are the Hayes Cooper Center in Merigold and the Bell Academy for Math, Science and Health Education in Boyle, both of which are pre-K-6 schools serving students from throughout the District and elsewhere in Bolivar County. The District uses a lottery-based admissions process for the two magnet schools.

Until the 2010-2011 school year, the District had five attendance zones with one elementary school serving grades K-6 in each zone: Parks, Pearman, Nailor, Cypress Park, and Bell. In 2010-2011, the District closed Bell and converted it to a Pre-K-6 magnet school. At the same time, the District merged the virtually 100 percent black Nailor, Cypress Park, and Bell attendance zones, assigning all students in those former three zones to Nailor for grades K-2 and Cypress Park for grades 3-5. The District made no changes to the Pearman and Parks attendance zones, each of which have significant white enrollment. The District reassigned all sixth graders,

except those at the two magnet elementary schools, to one of the two middle schools according to their zone of residence.¹

B. Projected 2015-2016 and 2016-2017 Enrollment in Grades 6-12

Tables 4 and 5 show the estimated enrollment in grades 6-12 for the 2015-2016 and 2016-2017 school years. The 2015-2016 enrollment figures were calculated using this year's enrollment data for grades 5-11, assuming all students at the zoned elementary schools continue to middle school, all current 8th graders continue to high school, and that all 5th graders at Bell and Hayes Cooper continue to 6th grade at those schools. The 2016-2017 enrollment projections were estimated using this year's enrollment data for grades 4-10, based on the same assumptions.

¹ As noted in the United States' May 2, 2011 Memorandum of Law in Support of its Motion for Further Relief [Doc. 6] ("May 2011 Mem."), the District neither sought nor obtained the Court's approval of the zone modifications prior to their implementation, which the United States argued was in contravention of the District's obligations in this case and under federal law. May 2011 Mem. at 20-21. Although the Court declined in its March 28, 2012 Order to order further relief for the elementary schools, the United States remains concerned that the continuing racial identifiability of most of the District's elementary schools is in violation of its desegregation obligations. The United States reserves the right to seek further relief on the elementary schools at a later time.

TABLE 4: PROJECTED ENROLLMENT FOR 2015-2016 SCHOOL YEAR (6TH-12TH GRADES)

	Black		White		Other		Total
	#	%	#	%	#	%	
6th (Bell)	26	54.2%	22	45.8%	0	0.0%	48
6th (Hayes Cooper)	20	41.7%	25	52.1%	3	6.3%	48
6th (non-magnet schools)	127	77.0%	32	19.4%	6	3.6%	165
6th (magnets only)	46	47.9%	47	49.0%	3	3.1%	96
6th (except magnets)	127	77.0%	32	19.4%	6	3.6%	165
All 6th	173	66.3%	79	30.3%	9	3.4%	261
7th (all)	187	72.2%	65	25.1%	7	2.7%	259
8th (all)	186	65.0%	89	31.1%	11	3.8%	286
6th-8th (except magnet 6th)	500	70.4%	186	26.2%	24	3.4%	710
All 7th-8th	373	68.4%	154	28.3%	18	3.3%	545
9th (all)	162	56.8%	102	35.8%	21	7.4%	285
10th (all)	184	68.7%	76	28.4%	8	3.0%	268
11th (all)	168	64.9%	84	32.4%	7	2.7%	259
12th (all)	145	61.7%	77	32.8%	13	5.5%	235
All 9th	162	56.8%	102	35.8%	21	7.4%	285
All 10th-12th	497	65.2%	237	31.1%	28	3.7%	762
All 9th-12th	659	62.9%	339	32.4%	49	4.7%	1047
District-wide 6th-12th grade total	1205	65.0%	572	30.9%	76	4.1%	1853

TABLE 5: PROJECTED ENROLLMENT FOR 2016-2017 SCHOOL YEAR (6TH-12TH GRADES)

	Black		White		Other		Total
	#	%	#	%	#	%	
6th (Bell)	31	64.6%	16	33.3%	1	2.1%	48
6th (Hayes Cooper)	23	44.2%	27	51.9%	2	3.8%	52
6th (non-magnet schools)	127	74.3%	37	21.6%	7	4.1%	171
6th (magnets only)	54	54.0%	43	43.0%	3	3.0%	100
6th (except magnets)	127	74.3%	37	21.6%	7	4.1%	171
All 6th	181	66.8%	80	29.5%	10	3.7%	271
7th (all)	173	66.3%	79	30.3%	9	3.4%	261
8th (all)	187	72.2%	65	25.1%	7	2.7%	259
6th-8th (except magnet 6th)	487	70.5%	181	26.2%	23	3.3%	691
All 7th-8th	360	69.2%	144	27.7%	16	3.1%	520
9th (all)	186	65.0%	89	31.1%	11	3.8%	286
10th (all)	162	56.8%	102	35.8%	21	7.4%	285
11th (all)	184	68.7%	76	28.4%	8	3.0%	268
12th (all)	168	64.9%	84	32.4%	7	2.7%	259
All 9th	186	65.0%	89	31.1%	11	3.8%	286
All 10th-12th	514	63.3%	262	32.3%	36	4.4%	812
All 9th-12th	700	63.8%	351	32.0%	47	4.3%	1098
District-wide 6th-12th grade total	1241	65.7%	575	30.4%	73	3.9%	1889

C. Condition and Estimated Capacity of Current Facilities

The United States conducted a review of the District's facilities with the assistance of its school facilities consultant, John Poros, Associate Professor of Architecture and Director of the Carl Small Town Center at Mississippi State University, between October 2014 and January 2015.² Mr. Poros visited and reviewed publicly-available and District-provided information about every school facility in the District, focusing on the condition and capacity of the middle school and high school facilities. Based on this facilities review, Mr. Poros prepared capacity estimates for each school based on the Mississippi School Design Guidelines, a set of best practices guidelines for Mississippi school facilities that were developed jointly by the Mississippi Department of Education and Mississippi State University.³

The United States' recent facilities review revealed that the aging Margaret Green and Cleveland High buildings may be nearing the end of their lifespan and, regardless of their future use, have certain deficiencies that may need to be rectified soon (including addressing potential structural and accessibility issues and making other changes, such as technology upgrades, to support a modern educational program).⁴ The classroom wings of Margaret Green were constructed in 1955 and 1959, with a gymnasium constructed in 1976. Although the buildings are currently suitable to house a combined high school, it is likely that the District will need to

² Mr. Poros's qualifications are briefly described on the United States' list of litigative consultants in Exhibit B in the Appendix.

³ See Miss. Dep't of Educ. & Educ. Design Inst. at Miss. State Univ., *Mississippi School Design Guidelines* 157 (2d. ed. 2004), available at <http://www.edi.msstate.edu/guidelines/>.

⁴ The main building of Cleveland High was constructed in 1949, with other portions of the facility constructed in 1939, 1959, and 1964, with limited renovations since that time. The two classroom wings of Margaret Green were constructed in 1955 and 1959, with a new gymnasium constructed in 1976. Exhibit C in the Appendix contains a list of construction dates for the District's facilities provided to the United States by the District in October 2014. The list was last updated in 2008 and does not reflect more recent construction or renovations, including an addition to D.M. Smith Middle School and renovations of East Side High School.

make significant renovations or replace one or both of those facilities in the foreseeable future, as discussed further in Section III.B.2.a. below.

Table 6 below reflects the estimated student capacity (maximum and optimal) of each of the District's school buildings (except for the CCDTC), with a column indicating the current enrollment as a percentage of the estimated optimal enrollment. The capacity estimates were calculated using the following optimal and maximum class sizes contained in the Mississippi School Design Guidelines:

Optimal Class Sizes

- 12-16 students to 1 teacher for all pre-K through 3rd grade classrooms.
- 16-20 students to 1 teacher for all 4th-7th grade classrooms.
- 20-24 students to 1 teacher for all 8th-12th grade classrooms.

Maximum Class Sizes

- No more than 25-30 students in any classroom.

As Table 6 illustrates, Bell, Nailor, and Cleveland High are currently operating above optimal capacity, while Cypress Park, D.M. Smith, and East Side High are currently operating well below their optimal capacity. The District has advised the United States that the Walter Robinson Achievement Center, a small facility constructed in 2003 with approximately 10 classrooms, is also currently under-utilized and may be repurposed in the future.

TABLE 6: SCHOOL CAPACITY ESTIMATES

School	2014-15 Student Pop.	Max. Physical Capacity	Optimal Student Capacity	Current # over (+) or under (-) optimal cap.	Current Utilization (2014-15 pop. as % of optimal cap.)
Bell Academy (PK-6)	376	420	252	+124	149%
Cypress Park ES (3-5)	265	570	352	-87	75%
Hayes Cooper Center (PK-6)	379	630	380	-1	100%
Nailor ES (K-2)	388	600	320	+68	121%
Parks ES (K-5)	361	600	360	-1	100%
Pearman ES (K-5)	261	360	209	+52	125%
Margaret Green JHS (6-8)	532	750	568	-36	94%
D.M. Smith MS (6-8)	249	840	636	-389	39%
Cleveland HS (9-12)	633	720	576	+47	110%
East Side HS (9-12)	365	990	792	-427	46%
Walter Robinson Achievement Center (alternative school)	Varies	198	135	n/a	n/a

III. LEGAL STANDARD

School districts under desegregation orders must “take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system.” *Hull v. Quitman Cnty. Bd. of Educ.*, 1 F.3d 1450, 1453 (5th Cir. 1993) (quoting *Freeman v. Pitts*, 503 U.S. 467, 485 (1992)). This duty exists “to ensure that the principal wrong of the *de jure* system, the injuries and stigma inflicted upon the race disfavored by the violation, is no longer present.” *Freeman*, 503 U.S. at 485. The duty is not simply to eliminate express racial segregation: where *de jure* segregation existed, the school district’s duty is to eliminate its effects “root and branch.” *Id.* at 437-38. Courts must look to whether “the school district has done all that it could to remedy the segregation caused by official action.” *See Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 298 (5th Cir. 2008) (internal quotation marks and citations omitted).

“The only school desegregation plan that meets constitutional standards is one that works.” *United States v. Jefferson Cnty. Bd. of Educ.*, 372 F.2d 836, 847 (5th Cir. 1966). As the Fifth Circuit stated in its decision in this case in April 2014, “[n]ow, six decades after *Brown v.*

Topeka Board of Education, 347 U.S. 483 (1954), ‘[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.’” *Cowan*, 748 F.3d at 238 (citing *Green*, 391 U.S. at 439).

IV. DESCRIPTION OF PROPOSED PLAN

The United States proposes a school consolidation plan that would result in a single-grade structure in the Cleveland School District, in which all students in grades 6-12 would attend one middle school and one high school beginning in the 2016-2017 school year. This plan, when fully implemented, would result in the immediate desegregation of the District’s schools serving grades 6-12, as each of those schools would reflect the District-wide student enrollment demographics. Following implementation of this plan, the District would remain obligated to meet all of its continuing District-wide desegregation obligations under the operative court orders in this case and federal law, including in the areas of student assignment, faculty, staff, extracurricular activities, and facilities. These obligations will remain in place until the District establishes that it has met the requirements for unitary status and the Court dismisses this case.

This plan contemplates an arrangement that will house all middle school and high school students by repurposing the existing East Side, Cleveland High, and Margaret Green facilities, which collectively have the capacity to accommodate the modified grade-level configurations set forth below without any major structural additions. However, the District could also implement this proposed plan successfully through the construction of one or more new school facilities if the District chose to pursue that option in order to address the long-term facilities issues discussed here. However, since planning, approval, and construction of any new buildings

would take at least several years, this proposed plan does not focus or rely on new construction, and can be implemented using existing buildings.

As discussed further below, the plan contemplates a planning year over the 2015-2016 school year that would permit the District to undertake the critical work necessary to transition to the new school configurations, which will be critical to the long-term success of the plan. Among other things, this year should include: adapting the District's existing educational programs and curricula for the newly configured schools; identifying any new programs or curricula that may be introduced at the middle school or high school to improve educational opportunities at those schools; addressing staffing considerations, performing any necessary maintenance and upgrades to the facilities; rebranding and marketing the new schools and their intended programs to the school community; and engaging all stakeholders in the entire school community, including students, parents, faculty and staff, and community members, in preparing for the introduction of the newly configured schools in August 2016.

This plan, which would create one high school and one middle school for the District that would necessarily reflect District-wide student enrollment demographics, would, if ordered by this Court, desegregate the District's middle school and high school program, and satisfy the constitutional requirement that the remedial plan ordered by this Court "promise[] realistically to work now." *See Green*, 391 U.S. at 439.

A. Open a new District-wide comprehensive high school serving all District students in grades 9-12 using the existing Cleveland High School and Margaret Green Junior High School facilities, with the option to replace those buildings with a new facility in the future on the same campus or another site.

1. Plan Description

a. Student Assignment

Under this plan, the District would, beginning in the 2016-2017 school year, assign all students in 9th-12th grades to a single comprehensive high school housed in the the current Cleveland High and Margaret Green facilities. The newly combined high school would open in August 2016 with approximately 1,098 students (based on the 2016-2017 projections set forth in Table 5 above). The estimated 2016-2017 student enrollment demographics are 62.9 percent black, 32.4 percent white, and 4.7 percent other, meaning the combined high school's student enrollment demographics would closely approximate the projected District-wide demographics.

In the new combined high school, the District would further ensure that all academic opportunities are available to all students in a non-discriminatory manner. To that end, the District would:

- prevent within-school segregation in classrooms or within-school programs by generally maintaining student enrollment in all programs and classrooms within 15 percentage points of the school-wide average by race;
- ensure that the high school's special education and gifted and talented programs (if any) are open to all qualified students and do not contribute to within-school segregation;
- develop equitable enrollment criteria and/or admissions process for any limited enrollment within-school academic programs, which would be subject to the United States' and the Court's review and approval;
- ensure that student disciplinary practices do not result in the discriminatory exclusion of students based on race, and utilize non-disciplinary interventions to the extent possible; and

- adopt and enforce policies to prevent harassment based on race, address incidents of such harassment promptly, and ensure that the school climate is safe and welcoming for all students, regardless of race.

b. Facilities

Use of current facilities beginning in 2016-2017. The Cleveland High and Margaret Green buildings have the capacity, layout, and centralized location to serve as the District's comprehensive high school by the beginning of the 2016-2017 school year.⁵ The current Cleveland High and Margaret Green facilities, located in adjacent buildings on the same campus, can adequately accommodate the projected enrollment for a combined 9th-12th grade high school. Currently, the combined population of Cleveland High and Margaret Green is 1,162 students, with both schools operating over their optimal student capacity. The combined optimal capacity for the two buildings (1,144 students) exceeds the projected population of a comprehensive 9th-12th grade high school by 97 students, leaving room for modest growth in the student population under this plan. Moreover, Margaret Green and Cleveland High already share athletics facilities that would generally be appropriate for continued use for the high school athletics program.

Because these buildings are already used as secondary schools, they are adequate for a high school program. The layout and close proximity of the existing buildings provide the District with the flexibility to adopt several high school configurations consistent with its desired academic programs, including any within-school programs or themed academies the District may wish to introduce later (provided that the enrollment in any such programs is reflective of the school-wide population and does not contribute to within-school segregation). The campus is also located about half a mile from Delta State University, which would permit the District to

⁵ The floor plans for Margaret Green and Cleveland High are contained in Exhibit D in the Appendix.

expand its early-college and dual-enrollment programs and allow easy access for its high school students to academic and co-curricular opportunities on the University's campus.

Option to construct a new high school as a long-term plan. As noted above, the current buildings are old and may require extensive renovations and costly maintenance in the near future, regardless of whether the District uses them for the proposed combined high school or in their existing configurations. Although this plan would not require it, if the District were to construct a new high school to meet its educational and operational needs, it could easily transition the newly combined high school to that facility later. The United States' position, based on consultation with education experts and parents and community members in Cleveland, is that a new high school would be an attractive option to the community generally, which would undoubtedly contribute to the success of this desegregation plan and yield educational benefits to all Cleveland students. The United States' consultants have estimated that, based on current standards and comparables, the District could construct a new high school with a 1,200-student capacity for \$20-26 million on a 35-37 acre site (which, as noted below, could include a portion of the current Cleveland High/Margaret Green campus). Our review of the District's financing options for facilities construction or renovation revealed that the District may be able to raise

adequate funds for such a project through bonds, government and private sector grants, and long-term operational cost savings from operating fewer and more efficient facilities.⁶

If the District pursued this option after consolidation, it could feasibly construct a building on the portion of the Cleveland High/Margaret Green campus currently occupied by athletics fields (among other possible scenarios). This option could allow the District to build a new school without purchasing new property, and to continue uninterrupted operations in the existing buildings during any period of construction. Because the District already has high school athletics facilities on the East Side campus, those facilities could be used by the high school sports teams during the construction period. Following construction, one or more of the existing structures on the Cleveland High/Margaret Green campus could be repurposed or replaced with new athletics facilities. Exhibit E in the Appendix illustrates this scenario for the Court's reference. If the District chose to pursue this option at some point, it would be fully consistent with the comprehensive District-wide high school plan set forth here.

Facilities review. Within 90 days of the Court's order approving the United States' plan, or on another timeline set by the Court, the District would complete a comprehensive review of the existing Cleveland High and Margaret Green facilities to identify any issues that would need

⁶ Financing options available to the District include general obligation bonds (requiring voter approval and limited to 15 percent of the assessed value of taxable property in the District); three-mill bonds with 10- or 20-year payback terms (which can be issued directly by the school board unless petitioned by the electorate); and certificates of participation for the purpose of leasing a building for school district purposes (which can also be issued directly by the school board unless petitioned by the electorate, with no 15 percent limit); and 16th Section loans. *See* Miss. Dep't of Educ., "Local District Funding Options," available at http://www.mde.k12.ms.us/docs/school-financial-services-library/lea_funding_options.doc?sfvrsn=2. Based on publicly available information, our consultants have preliminarily estimated that the District could raise up to approximately \$27 million through a general obligation bond. A three-mill bond issued by the Board could raise approximately \$10.4 million. All figures represent consultant's calculations using data found at <http://www.cleveland.k12.ms.us/?DivisionID=4851&ToggleSideNav=>. (The link for the accountability report from the 2012 academic year was dead; therefore, 2012 data is not included.) The District may also have a variety of other private and public funding sources available to use for school construction and renovations. *See generally* C. Dortch, Cong. Research Serv., *School Construction and Renovation: A Review of Federal Programs* (2013), available at <http://www.fas.org/sgp/crs/misc/R41142.pdf> (describing federal sources of school facilities funds).

to be addressed before the opening of the newly combined high school in August 2016, as well as any long-term facilities needs that would impact the ability of the District to operate a high school program in those facilities. Within 45 days of completion of that review, the District would develop a strategic plan to address any structural, educational, or accessibility issues at those buildings, or to construct a new high school facility on that campus or another site to replace the existing facilities. The strategic plan would be subject to the United States' and Court's review and approval.

c. Faculty and Staff

Under this plan, the District would assign all faculty and staff currently assigned to Cleveland High and East Side to the new high school campus. The District would reassign all faculty and staff currently assigned to Margaret Green to the new middle school contemplated by Part III.B. of this plan. If combining the two high schools' staff resulted in redundant positions, the District would undertake a process to reassign affected staff to other positions or schools, or take other action deemed appropriate by the District and in compliance with the operative orders in this case and federal law. During the 2015-2016 school year, the District would develop and propose a high school faculty recruitment and retention plan, focusing on any anticipated changes to staffing needs at the new high school, including for subject areas relevant to any themed within-school academic programs. The District would recruit and hire new faculty and staff, make any necessary reassignments between schools, and conduct any reductions in force in a nondiscriminatory manner consistent with the District's continuing faculty and staff obligations in this case.

d. Extracurricular Activities

Under this plan, the new high school would offer extracurricular and athletic activities and encourage participation in the extracurricular offerings by all students. The District would not consider any student's race as a criterion for participation in any extracurricular activity, including student organizations and clubs, honor societies, athletics teams, special recognition (e.g., homecoming courts, yearbook superlatives), prom and other dances, and other activities and events. The District would consolidate duplicative athletics teams and other activities from the two existing high schools.

e. Other Planning and Implementation Measures

Under this plan, the District would, beginning in the 2015-2016 planning year and continuing through the full implementation of the plan in the 2016-2017 school year, take the following measures to ensure successful implementation of this consolidation plan.

- To encourage unity and a welcoming environment for students who previously attended East Side, the District would adopt a new, neutral name for the high school and a new school mascot, and take other efforts to “re-brand” the high school in a way that will generate support and excitement for the new high school. To encourage buy-in from key stakeholders, including parents, students, and community members, the District would include students and other members of the school community in the selection process for the school name and mascot, which would be conducted during the 2015-2016 school year.
- To the extent appropriate, the District would take affirmative steps to reflect the history of the two legacy high schools in the new District-wide high school (e.g., moving the trophy cases and the generations of graduating class composite photos displayed in the current schools to the newly combined school facility).
- During the 2015-2016 school year, the District would determine what educational curricula and programs would be offered at the new high school, including any within-school academic programs it would introduce at the new school or continue from the existing schools (e.g., the International Baccalaureate program at East Side). The District would adjust its budget and seek external funding to support its educational programs, including any within-school programs.

- The District would consider developing and supporting new and continuing academic programs that reflect the needs and desires of a broad spectrum of constituents in the Cleveland community. To do so, the District should continue to engage with community organizations, educational institutions, and employers, including but not limited to Delta State University, the Delta Arts Alliance, the Chamber of Commerce, Bolivar Medical Center, and other community-based organizations and major employers (e.g., Baxter Healthcare) to develop partnerships to create and promote educational opportunities to all of its students, which may include academic and career readiness programs, unique programs and curricula focused on themes popular in the Cleveland community (e.g., science and healthcare, arts and music, dual-enrollment at local colleges).
- By the beginning of the 2015-2016 school year, the District would form a multi-racial advisory panel composed of approximately 10-12 parents, community members, and high school student representatives serving 1-2 year terms, half of whom would be appointed by the District and the other half by the United States, which would advise and assist the District on its implementation of the proposed plan, including on developing community and business partnerships, organizing public engagement efforts, and marketing the newly combined middle school to prospective students and their parents. The advisory panel would also assist the District in soliciting community input on issues related to the educational programs offered at the middle school and high school. Appointments to vacancies to the advisory panel would be on an annual basis, or as needed, using a process agreed on by the Parties and approved by the Court.

B. Open a new middle school at the current East Side High School facility serving all District students in grades 6-8, except for those 6th grade students attending the District's two magnet elementary schools.

1. Plan Description

a. Student Assignment

Under this plan, the District would, beginning in the 2016-2017 school year, assign all students in grades 6-8 (except for the sixth graders at Bell and Hayes Cooper) to a single District-wide middle school housed in the current East Side High School facility. The new middle school would open with approximately 692 students (*see* Table 5 above). The projected 2016-2017 student enrollment demographics would be 70.5 percent black, 26.2 percent white, and 3.3 percent other (*see* Table 5 above). We note that the projected percentage of black enrollment at a combined middle school is higher than at the combined high school because

some sixth graders will remain at the two magnet elementary schools, which are disproportionately white relative to the District-wide student population. If the District adjusted its admissions practices to the magnet schools to recruit and admit more black students, resulting in enrollment at the magnet elementary schools that better reflects the District-wide demographics, the middle school enrollment would more closely approximate the District-wide averages over time.⁷

The District would offer a standard middle school program at the new middle school, incorporating existing programs at the current middle schools (e.g., the International Baccalaureate program at D.M. Smith) into the new school. As described above, the District may consider different within-school academies based on grade level (e.g., sixth grade academy) or theme (e.g., science and health) to improve the attractiveness and educational quality of the middle school program to students and their families.

In the new middle school, the District would ensure that all academic opportunities are available to all students in a non-discriminatory manner. The District would adopt the types of policies and procedures described in Section V.A.1.a. above, to be reviewed by the United States and approved by the Court, to prevent within-school segregation and ensure that all educational programs and activities offered by the school promote educational opportunities for all students and are racially diverse. To the extent the District maintains the STAR program for gifted and talented students at the middle school, or a similar program, the District would ensure that all

⁷ Under the 1989 Consent Order in this case, the current racial enrollment targets for Hayes Cooper are 50% black and 50% white, with a permissible deviation of 5 percentage points. 1989 Consent Order at 9. The United States believes these enrollment targets, which are not reflective of the actual current student population in the District, have resulted in disproportionately high enrollment of white students at Hayes Cooper relative to the District-wide population, and recommends that the 1989 Consent Order be modified to adjust these targets. The United States reserves the right to seek these modifications in this case in the future.

qualified students have the opportunity to participate in the program and that the program does not contribute to within-school segregation.

b. Facilities

The East Side facility is in good overall condition and could house a middle school program immediately with few, if any, modifications or upgrades needed in the short term. The layout of the building with traditional classrooms in separate wings provides flexibility to the District to use the facility in different grade-level or academic configurations.⁸ Additionally, the school has existing athletics facilities and fields that could be used for the new middle school's physical education and athletics programs.

Currently, the student population at East Side High School is 360 students, well below the estimated optimal capacity of 792 students and the maximum capacity of 990 students. As mentioned above, the combined middle school would open with 692 students, which is well within the capacity of the building without any major modifications or additions.

Given the overall good condition of the East Side building and recent renovations, limited renovations would be needed to house all middle school students by the 2016-2017 school year.⁹ However, as contemplated for the proposed high school facilities in Section III.A.1.b. above, the District should undertake a facilities review to assess and develop a plan to address any facilities needs for the combined middle school program by the beginning of the 2016-2017 school year. This review should include whether any external or cosmetic upgrades to the East Side facility or campus would be beneficial in promoting parental and community support and interest in the new middle school.

⁸ The floor plan for East Side is contained in Exhibit D in the Appendix.

⁹ East Side was constructed in 1956, with additions built in 1965 and 1974. *See* Exhibit C in the Appendix.

Under this plan, the District would either close the facility currently housing D.M. Smith Middle School or repurpose it to expand the physical capacity of Cypress Park Elementary School. The Margaret Green facility, as described above, would be used as part of the new high school campus.

c. Faculty and Staff

Under this plan, the District would reassign all faculty and staff currently assigned to Margaret Green and D.M. Smith to the new combined middle school. If combining the two middle schools' staff resulted in redundant positions, the District would undertake a process to reassign affected staff to other positions or schools, or take other action deemed appropriate by the District. The District would hire new faculty and staff, make any necessary reassignments between schools, and conduct any reductions in force in a nondiscriminatory manner consistent with the District's continuing faculty and staff obligations in this case.

d. Extracurricular Activities

Under this plan, the new middle school would offer a standard set of middle school extracurricular and athletic activities and encourage participation in the extracurricular offerings by all students. The District would not consider any student's race as a criterion for participation in any extracurricular activity, including student organizations and clubs, honor societies, athletics teams, student leadership positions, special recognition (e.g., homecoming courts, yearbook superlatives), prom and other dances, and other activities and events. The District would consolidate duplicative athletics teams and other activities from the two existing high schools.

e. Other Planning and Implementation Measures

Under this plan, the District would, beginning in the 2015-2016 planning year and continuing through the full implementation of the plan in the 2016-2017 school year, take the following measures to ensure successful implementation of this consolidation plan.

- As with its newly combined high school, the District would adopt a new, neutral name and school mascot for the newly combined middle school, and take other efforts to “re-brand” the middle school to encourage unity and a welcoming environment for all students, which should include a selection process during the 2015-2016 school year involving students and other stakeholders in the school community.
- During the 2015-2016 school year, the District would determine what educational curricula and programs would be offered at the new middle school, including any within-school academic programs it would introduce at the new school or continue from the existing schools (e.g., the International Baccalaureate program at D.M. Smith). The District would adjust its budget and seek external funding to support its educational programs, including any within-school programs.
- As described in more detail in the high school section above (*see* Section V.A.1.e.), the District would form a multi-racial advisory panel to advise the panel on implementation of the proposed middle school plan.

V. MONITORING AND COMPLIANCE

If this plan is approved by the Court, the United States would monitor the District’s compliance with its obligations under this plan, all other operative court orders in this case, and federal law, for a period of at least three full school years running from the date the plan is fully implemented at the beginning of the 2016-2017 school year, or until the District meets its burden of demonstrating that it has complied fully with all of its obligations in this case and is eligible for a declaration of unitary status by this Court, whichever is later.

The District would provide all documents contemplated for the United States’ review and approval no later than 90 days prior to their intended implementation. The United States would

provide feedback no later than 60 days after receiving the documents, and the Parties would attempt in good faith to resolve any disagreements without judicial intervention. The Parties would notify the Court of any disagreements that cannot be resolved voluntarily and request that the Court take appropriate action.

The District's current annual reporting requirements, which require an annual report be filed with the Court by June 15 of each year, would remain unchanged. In addition to the existing requirements, the District would be required to:

- File semi-annual court reports no later than June 15 and December 15 of each year, providing a detailed summary of the District's efforts to implement this plan;
- Seek and obtain the United States' and Court's approval for any planned changes to the structure or use of existing or new school facilities;
- Seek and obtain the Court's approval for any changes to the configuration of or assignment of students to the elementary schools (including, but not limited to, converting a school from a zoned school to a magnet school, changing attendance zone boundaries, or consolidating/deconsolidating attendance zones);
- Seek and obtain the United States' and Court's approval of the planned introduction of any new within-school programs or other limited-enrollment programs at the middle school or high school level, as well as the eligibility/admissions process for each such program demonstrating that the program would be desegregated and not result in within-school segregation. The District would provide admissions/enrollment data requested by the United States for each such program for monitoring purposes.

Additionally, the District would, upon reasonable request, provide all other documents, information, or access to school facilities requested by the United States to fulfill its monitoring obligations in this case.

VI. SUMMARY OF IMPLEMENTATION TIMELINE

For the Court's and the Parties' reference, Table 7 below summarizes the key implementation dates and deadlines set forth in the United States' proposed plan.

TABLE 7: SUMMARY OF PROPOSED IMPLEMENTATION TIMELINE

PRIOR TO 2015-2016 SCHOOL YEAR:
<ul style="list-style-type: none"> • The District would complete a comprehensive review of the existing Cleveland High, Margaret Green, and East Side facilities to identify any facilities issues that that would impact the ability of the District to operate a middle school and high school program in those facilities or that would need to be addressed to satisfy the objectives of this consolidation plan. Within 45 days of completion of that review, the District would develop a strategic plan to address any structural, educational, or accessibility issues at those buildings. • The District would undertake a process, involving all stakeholder groups in the school community, to rebrand and market the newly combined schools and their intended programs to the school community, including adopting a new school name and mascot for the middle school and high school. • The District would form a multi-racial advisory panel to advise and assist the District on the implementation of the proposed plan and solicit community input on issues related to the educational programs offered at the middle school and high school. • The District would identify partnerships with community organizations and employers to support the new schools' educational offerings.
DURING THE 2015-2016 SCHOOL YEAR:
<ul style="list-style-type: none"> • The District will performs any necessary maintenance and upgrades to the facilities used for the middle school and high school. • The District will adapt its educational programs and curricula for the newly combined schools, and plan for any new programs. • The District would address staffing needs and changes at the newly combined schools, including: (1) developing a faculty recruitment and retention plan ; and (2) recruiting and hiring new staff, making necessary reassignments between schools, and conducting any necessary reductions in force, consistent with the District's desegregation obligations and federal law. • The District would continue to develop the stakeholder engagement and community partnerships identified and initiated before the 2015-2016 school year.
BY THE BEGINNING OF THE 2016-2017 SCHOOL YEAR:
<ul style="list-style-type: none"> • The District would assign all students in 6th-8th grades (except for the 6th graders at Bell and Hayes Cooper) to a single District-wide middle school housed in the current East Side High School facility. • The District would assign all students in 9th-12th grades to a single comprehensive high school housed on a new high school campus using the current Cleveland High/Margaret Green facilities. • The District would continue to use its advisory panel and engage the school community in taking steps to improve support for the new schools, and to ensure that all opportunities are available to all students in a nondiscriminatory manner.

VII. ASSESSMENT OF ANTICIPATED IMPACT OF PROPOSED PLAN ON DISTRICT'S REMAINING DESEGREGATION OBLIGATIONS

The District's implementation of the United States' proposed plan would enable it to meet its continuing desegregation obligations at the middle school and high school level in the areas of student assignment, faculty, staff, facilities, extracurricular activities, and transportation.¹⁰ By creating a single-grade structure in grades 6 through 12, implementation of the proposed plan would obviate any actual or potential problems involving disparities in faculty/staff assignment between racially identifiable schools serving the same grade levels. Similarly, as all students would be attending school in the same facilities, any concerns about facilities disparities would also be eliminated by this plan. With regard to extracurricular activities, this plan's proposed consolidation of existing athletics teams and student activities would minimize the potential for segregated activities, although continued monitoring of this factor during the first several years of the new schools would be warranted. The United States has observed no issues in the area of transportation; assuming the District maintains desegregated bus routes for its newly combined schools, the District would likely be in compliance on that factor. Assuming the District implemented and maintained this plan in good faith and in accordance with its obligations under the operative orders in this case and federal law for a reasonable period of time, the District would likely meet its desegregation obligations at the middle school and high school level.

¹⁰ This plan does not address the District's continuing obligations with respect to its elementary schools.

VIII. CONCLUSION

The Cleveland School District's middle schools and high schools are, and have always been, segregated schools. East Side High School and D.M. Smith Middle School are, and always have been, one-race, virtually 100 percent black schools. Cleveland High School and Margaret Green Junior High School have always enrolled nearly every white middle school and high school student in the District, and remain disproportionately white schools. Sixty-one years after *Brown v. Board of Education*, and fifty years after this case was first filed in this Court, the time has come for the Court to order a plan that will certainly work now in achieving actual desegregation of these schools. The United States' proposed consolidation plan would result in one middle school and one high school, which would both be desegregated and reflect the District-wide student enrollment demographics. Successful implementation of this plan would remove a major roadblock still obstructing the District's path toward unitary status and dismissal of this case. For these reasons, the Court should order the immediate implementation of the United States' plan and direct the District to open a combined middle school and combined high school by the beginning of the 2016-2017 school year.